NATURAL GAS CORP. OF CALIFORNIA

IBLA 81-942 Decided November 5, 1981

Appeal from the decision of the Arizona State Office, Bureau of Land Management, rejecting oil and gas lease offer A 16224 in part.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

   The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act.

2. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Consent of Agency

   The recommendations of the Forest Service are important in determining whether or not an oil and gas lease should issue for public lands but are not conclusive. Ultimately, the Secretary of the Interior is entrusted with the responsibility of determining whether or not to issue a lease.

3. Oil and Gas Leases: Discretion to Lease

   A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be affirmed where it sets forth the reasons therefore and the facts of record support the conclusion that refusal to lease is in the public interest.

APPEARANCES: C. T. Clark, Jr., Esq., for Natural Gas Corporation of California; Demetrie L. Augustinos, Esq., for Forest Service, U.S. Department of Agriculture.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Natural Gas Corporation of California has appealed the decision of the Arizona State Office, Bureau of Land Management (BLM), dated July 22, 1981, rejecting its oil and gas lease offer A 16224 in part. Appellant's lease offer encompassed 6,569 acres of land in T. 19 S., R. 16 E., Gila and Salt River meridian. BLM rejected the following lands because the status records indicate that the oil and gas interest is not owned by the United States:

Sec. 18: S 1/2 N 1/2 SE 1/4, S 1/2 SE 1/4
30: E 1/2 E 1/2 NE 1/4 NW 1/4

BLM rejected certain additional lands because the Forest Service has recommended that they be withheld from leasing so as "not to encumber an active exchange case designed to greatly simplify a complex ownership and landline situation." The affected lands are:

Sec. 4: Lots 3 and 4, S 1/2 NW 1/4, SW 1/4
5: All
6: All

A lease has been issued for the remaining 5,042.94 acres in appellant's offer.

In its statement of reasons, appellant refers to all of the rejected acreage, but styles its arguments as if it is appealing the rejection of only those lands involved in the Forest Service recommendation. It asserts that the partial rejection is in "direct contravention to the mandatory language of 43 CFR 3101.1-1 * * * which states: '(a) . . . Other Public Domain lands shall be leased only non-competitively to the first qualified applicant.'" It asserts also that the Forest Service recommendation is not supported by facts of record and urges that the Forest Service should apply for a formal withdrawal if it wishes to set aside this land for any purpose. Alternatively, appellant argues that, if the rejected lands are involved in an exchange, the application for exchange would have temporarily segregated the lands from application of the mineral leasing laws and that under 43 CFR 2091.2-5 and this Board's decision styled Trent J. Parker, 51 IBLA 178 (1980), its oil and gas lease offer should have been suspended until final action was taken on the exchange.

In response, the Forest Service argues first that the authority of the Secretary of the Interior to lease for oil and gas is discretionary under 43 CFR 3101.1-1(a), not mandatory and, even if appellant is the first qualified applicant, that status does not give appellant

an absolute right to have a lease. Second, Forest Service asserts that the BLM decision was supported by the record. It notes the recommendation memorandum in the case file which states in part: "We ask that the following described tracts be withheld from leasing in order not to encumber an active exchange case designed to accommodate planned overburden disposal, tailings disposal and plant facilities of Anamax, in connection with a new mine." In its response Forest Service adds that the uses contemplated by Anamax are incompatible on their face with oil and gas operations and asserts that BLM was correct in its decision. 1/ Third, Forest Service notes that the Secretary may reject a lease offer even though the land has not been withdrawn from mineral leasing.

[1] Appellant's assertion that the Secretary of the Interior has no discretion in the issuance of noncompetitive oil and gas leases of public land is incorrect. Section 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976), requires that if an oil and gas lease is issued for lands not within a known geological structure of a producing oil and gas field, it must be issued to the first qualified applicant; however, the statute "left the Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1 (1965); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969). Furthermore, the discretionary authority of the Secretary to refuse to issue oil and gas leases for public domain lands applies even where the lands have not been withdrawn from the operation of the mineral leasing laws. Udall v. Tallman, supra; Robert P. Kunkle, 41 IBLA 77 (1979). But cf. Mountain States Legal Foundation v. Andrus, 499 F. Supp. 383 (D. Wyo. 1980) (withholding action on substantial numbers of lease offers embracing very large tracts of public domain for extended period may be construed as a withdrawal under section 103, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(j) (1976)).

The regulation adverted to by appellant, 43 CFR 3101.1-1(a), reads in full:

> (a) All public domain lands subject to disposition under the Act may be leased by the Secretary of the Interior. Lands within a known geologic structure of a producing oil or gas field shall be leased only by competitive binding to the highest responsible qualified bidder. Other public domain lands shall be leased only noncompetitively to the first qualified applicant. [Emphasis added.]

The authority to lease is discretionary under the regulation just as it is under section 17 of the Mineral Leasing Act of 1920, supra. The language in the last sentence of this regulation which is mandatory,

1/ Forest Service requests that, if the Board determines that BLM's decision is not reasonably supported by facts of record, the case be remanded to BLM for further consideration.

as identified by appellant, dictates the form in which lands not within a known geologic structure of a producing oil and gas field may be leased. If such land is to be leased, it must be leased noncompetitively to the first qualified applicant.

[2, 3] The discretion to lease or not to lease is vested in the Secretary for oil and gas leasing of national forest lands as well as other public domain lands. Chevron Oil Co., 24 IBLA 159 (1976); 30 U.S.C. § 181 (1976). Where public domain land is administered by another agency, such as the Forest Service, BLM should properly consider the recommendations of that agency regarding lease issuance or the imposition of stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values. Esdras K. Hartley, 54 IBLA 38, 88 I.D. 437 (1981). The recommendation of the Forest Service regarding the national forest public lands are important, but not conclusive, in determining whether a lease should be issued. Chevron Oil Co., supra; Stanley M. Edwards, 24 IBLA 12 (1976); Esdras K. Hartley, 23 IBLA 102 (1975). A BLM decision refusing to issue a lease will be upheld provided it sets forth the reasons for doing so and facts of record support the conclusion that the refusal is required in the public interest. Esdras K. Hartley, 54 IBLA 38, 88 I.D. 437 (1981); Robert P. Kunkel, supra at 78.

The Forest Service has authority under various statutes to make exchanges of National Forest System real property to meet management objectives within the System. See generally 36 CFR Part 254. Such exchanges do not involve any withdrawal or segregation of the lands while final action on the exchange is pending. The BLM regulation at 43 CFR 2091.2-5 2/ and this Board's decision in Trent J. Parker, supra, are not applicable to the case herein.

Thus the question at issue is whether BLM's refusal to lease the identified lands is justified as in the public interest and consistent with multiple use values of the public lands based on the pending exchange.

When considering and approving an exchange, the Forest Service must find that the exchange is in the public interest and will not result in a decrease in public values or the ability to meet National Forest System management objectives. 36 CFR 254.3(a)(1)(ii). In so determining, Forest Service must consider the need for the land in question for its mineral value. Id.

We find that the described purpose of the exchange supports the Forest Service assertion that oil and gas leasing would be incompatible

2/ We note that 43 CFR 2091.2-5 was revoked effective Apr. 15, 1981. 46 FR 5794, 5805 (Jan. 19, 1981), and 46 FR 22585 (Apr. 15, 1981).

with that purpose. Given the fact of the pending exchange and that incompatibility and given the obligation of the Forest Service to consider the public interest in making the exchange, we find that BLM's refusal to lease in this instance so as not to encumber the land during the pendency of the exchange is in the public interest and supported by the record.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Arizona State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge